

**From:** LWillo1124@aol.com [mailto:LWillo1124@aol.com]  
**Sent:** Monday, January 23, 2006 7:42 PM  
**To:** Melissa Miller-Henson  
**Cc:** gaines@lifesci.ucsb.edu; spalumbi@Stanford.edu; LWillo1124@aol.com  
**Subject:** MLPA CCRSG, Pacific Grove Marine Garden Fish Refuge and Local Law

Dear Melissa

Out of necessity, the Tidepool Coalition has researched the local and state archives concerning state and local legislation on PGMGFR which goes back as far as 1931. I am sending to your for the BRTF and CCRSG a letter to our city attorney, Mr. David Laredo for a legal opinion on some of these legal documents. If the DFG, Fish and Game Commission or CCRSG is proposing major changes in the refuge such as changing its name and dividing it down into smaller entities, they should be familiar with local laws that protect this refuge, and the state constitutional protections including the power of the initiative and the transfer of ownership to the City of Pacific Grove in 1931.

Please give both the BRTF and CCRSG copies of the letter below.

### **Tidepool Coalition aka**

**COALITION TO PRESERVE and RESTORE PT. PINOS TIDEPOOLS**  
**P.O. Box 433, Pacific Grove, California 93950**

**Within these areas, no risk of change is considered acceptable unless it is part of a natural process\***

January 22, 2006

Dave Laredo, Attorney  
City of Pacific Grove

Re: Pacific Grove Marine Gardens Fish Refuge

Dear Mr. Laredo:

As Chairman of the Tidepool Coalition, a local grassroots ad hoc marine conservation organization in Pacific Grove, I am writing to you regarding Resolution 5-035 passed by the City Council 10/5/05 supporting designation of the Pacific Grove Marine Refuge as a State Marine Reserve under the California Marine Life Protection Act of 1999.

At that council meeting, a recommendation was added exempting existing "hand kelp harvesters from the prohibition of taking marine plant life." It was reported by the kelp harvester at that meeting that 4 to 5 tons of marine plant life per week are removed from the refuge.. Isn't kelp harvesting in the city's refuge prohibited by M.C. 14.04.020? If this practice and precedent is allowed, will it be extended to other commercial interests? Moreover, if the kelp industry is allowed to continue taking 5 tons/week in our refuge, the City must require an Environmental Impact Report (EIR) to determine the effects on our marine environment.

As far as the State Marine Reserve Designation, the Coalition has worked toward this end for seven years. The three proposals developed by the Marine Life Protection Act Central Coast Stakeholders Group (MLPA CCRSG) include splitting our historic refuge into smaller components with different regulations. To many of us, these proposals to break up the city's historic and beloved Marine Gardens Fish Refuge does not make good scientific sense in view of the legislative intent of MLPA A.B. 993.

Historically, the Department of Fish and Game has done practically nothing in the way of responsible management of our marine resources, and very little in the way of enforcement. How does it expect to manage a much more complicated area with each different rules and regulations. It doesn't make good 'enforcement and management' sense to have a mishmash of designations along the city's coastline, and it doesn't set well with the community which has petitioned repeatedly for a State Marine Reserve, a totally protected area prohibiting all extractions. It also doesn't set well with the community to break the integrity of this irreplaceable refuge which is an ecological continuum that must be kept intact, and set aside for the enjoyment of the citizens of Pacific Grove, the people of California and future generations.

It is apparent from the e-mails that I am enclosing from Vice Mayor Dan Cort and Councilwoman Lisa Bennett that they are somewhat confused and uninformed as to the history of our refuge. Since the 1950's, the citizens of Pacific Grove have sought greater protection for the city's refuge through legislative action and initiative petitions.

In June, 2000 Ordinance 00-12 was passed and adopted following a successful Tidepool Preservation ballot Initiative which Pacific Grove voters (20%) overwhelmingly supported as an interim step to prohibit collecting in the refuge until a designation as a State Marine Reserve could be achieved. At that time, the MLPA A.B. 993 had successfully passed into law in Sacramento. Our own 27th District Assemblyman, Fred Keeley was co-sponsor of the bill. He took a great interest in the work of the Coalition.

I would think some legal research on this issue would be very appropriate for we believe whatever the Fish and Game Commission decides regarding the destiny of our refuge under the MLPA, if it involves splitting our refuge into smaller components, it will probably become a legal matter for the courts.

I call your attention to the following references, including Pacific Grove ordinances that protect our refuge at the present time. I would hope that you would advise the Council, and the public of your legal opinion or position regarding the following:

- (1) "An Act granting to the City of Pacific Grove the title to the waterfront and said city together with certain submerged lands in the Bay of Monterey approved by the Governor, June 9, 1931 are hereby established as a refuge.

Under prohibited uses, no part of real property shall be used, employed, leased or disposed of in any manner whatsoever for commercial, industrial or revenue producing purposes or uses.  
(there are no third parties involved)

- (2) Article III of the Pacific Grove City Charter involves inalienable rights of the City. The City has reserved rights to its waterfront and lands underwater which are to be construed as inalienable rights.

- (3) Pacific Grove Municipal Ordinances, Chapter 14: Marine Refuge. (1952).

14.04.010 establishes the marine garden refuge for the protection of certain kinds of marine life hereinafter mentioned and as a **marine garden** of the city".....

14.04.020 forbids and makes unlawful the taking of **marine plants**.

- (4) 1963 S.B. 1006 established the Pacific Grove Marine Gardens Fish Refuge. This bill was introduced by Senator Fred Farr at the request of his Pacific Grove constituents. Signed into law by Governor Edmund G. Brown, June, 1963.

- (5) 1984 S.B. 1812 expanded the Pacific Grove refuge to match the City limit boundary. This was to provide uniform management of the city's refuge. Bill was sponsored by Senator Henry Mello, and signed into law by Governor George Deukmejian July, 1984.

As far as local law is concerned, I bring to your attention in regards to the State Constitution "the rights and interests in tidelands, which is subject to sovereignty of the State, are matters of local law. Article 3, Sec. 2 Borax Consolidated vs. City of Los Angeles, 1935, 56 S. Ct. 23,296 U.S. 10, 80 L. Ed. 9.

If the city's tidelands are subject to local law which we believe they are:

- (6) P.G. Municipal Ordinance 00-12 (not yet codified) which was a direct result of the successful Pacific Grove Marine Garden Fish Refuge Conservation and Protection Initiative states that the taking of marine invertebrates and **other marine life** from the refuge is prohibited.

The local Department of Fish and Game will not enforce, or do they recognize local law. (Constitutional Initiative according to Article 16 of the City Charter).

- A. What the Department of Fish and Game and some city council members do not realize is the fact that initiatives and referendums are not 'rights' granted to the people, but rather are powers reserved for them. Rossi vs. Brown, (1995). 38. Cal Reprtr. 2nd 363.
- B. Local Initiative Power may be even broader than the initiative power reserved in the Constitution. Rossi vs. Brown (1995) 38. Cal Reprtr. 2nd 363.
- C. City Charter may not restrict broad powers of initiative and referendums reserved by the Constitution Rossi vs. Brown (1995) 38. Cal Reprtr. 2nd 363
- D. The People's reserve power of initiative is greater than the power of the legislature. Rossi vs. Brown (1995) 38. Cal Reprtr. 2nd 363.

The Pacific Grove Marine Gardens Fish Refuge Marine Conservation and Protection Initiative was based upon California Department of Fish and Game Code, Section 1002 (h) which is still current and remains in the code. It is printed on every scientific collecting permit issued in the State of California. The permit has many conditions the holder must obey, including all other Federal, State and Local Law. (copy of Fish and Game Collecting Permit enclosed).

It is hoped you would research the issue regarding Resolution No. 5-035 as far as the exemption which Mayor Costello added as an amendment to the original motion on October 5, 2005. It would appear that this exception for existing hand kelp harvesters is in conflict with City Ordinance 14.04.020 and 00-12. Moreover, to our knowledge the legality of enforcement of 1002 has never been challenged.

Could you please advise the Council, and the citizens of Pacific Grove of your legal opinion on the above marine conservation issues as they relate to extractive and commercial activities in the Pacific Grove Marine Gardens Fish Refuge?

Very truly yours,

Jim Willoughby, Chairman

enclosures

**\*Pacific Grove Coastal Parks Plan**